



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Approval to authorize a temporary modular building to be moved to the Lodi Animal Shelter and for the City Manager to approve a Memorandum of Understanding with People Assisting Lodi Shelter (PALS)

**MEETING DATE:** November 17, 2004

**PREPARED BY:** Jerry J. Adams, Chief of Police

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**RECOMMENDED ACTION:** That the City Council authorize the City Manager to approve a Memorandum of Understanding with People Assisting Lodi Shelter (PALS) and to have a temporary building moved to the Lodi Animal Shelter in order to improve the housing conditions for animals at the shelter and provide an environment that will increase pet adoptions.

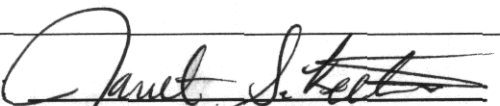
**BACKGROUND INFORMATION:** People Assisting Lodi Shelter (PALS), a non profit organization whose goal is to increase animal adoptions, improve animal housing conditions, and assist shelter staff by helping keep the animals in a clean environment, is proposing that a temporary building be moved to the Lodi Animal Shelter facility to house adoptable cats. PALS will assume responsibility for the move of the building to the Animal Shelter facility and pay the monthly rent of the building which is to be \$300 for the duration the building is in use. In addition, PALS will make necessary modifications to the building for the purpose of housing adoptable cats which we believe will increase pet adoptions, reduce possible disease exposure, and provide education to the public. PALS will purchase interior fixtures, bedding, cages, cleaning products, and maintain and keep the building clean. Funding for the building interior and monthly rent would come from donations made to the Animal Shelter which are currently being held in a trust account through the City of Lodi. There is \$14,127.74 in the account at this time. When these funds are depleted, PALS will fund the project through their non-profit account.

The Lodi Animal Shelter currently has 31 cat cages that house cats in an area of the Animal Shelter that is overcrowded and difficult to control disease. By moving the cats to the proposed temporary building, Animal Shelter staff will be able to use the current area of the facility as a triage and holding area for potentially sick animals.

Shelter staff will continue to conduct adoptions from the kennels and the proposed new housing facility for the cats. PALS will maintain the new building, clean the cages and care for the cats until they are adopted. It is anticipated that shelter staff will initially be involved in adopting cats from this new addition, but as PALS increase the number of volunteers their goal is to staff the facility during all adoption hours. With PALS conducting the cleaning and handling the adoptable cats in the building this would reduce the workload on kennel cleaning staff.

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APPROVED

  
Janet S. Keeter, Interim City Manager

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The Police Department, Public Works Department and Electric Utilities Department have met and would be working jointly to provide the following services to facilitate the building addition:


- Preparation and lowering the foundation area so the modular building will set at ground level and be ADA accessible
- Water/waste water hookup
- Electrical hookup
- Securing building permits and Planning Commission Approval


It has been determined that the site preparation work of this temporary building would be minimal and take less than a days time and effort. The grading for this project will be done in the context of what is included in the MSC master plan. The cost of modifying these plans to accommodate this building would not exceed those of the current plan.

The attached Memorandum of Understanding between the City of Lodi and PALS is in the final stages of preparation and would be subject to approval by the City Attorney and the City Manager.

**FUNDING:** \$14,127.74 from the Lodi Animal Shelter Trust;  
Account 1410-2357.5

  
James R. Krueger, Finance Director

  
Jerry J. Adams  
Chief of Police

  
for Richard Prima  
Public Works Director

  
Alan Vallow  
Electric Utility Director

MEMORANDUM OF UNDERSTANDING  
PEOPLE ASSISTING LODI SHELTER

This Memorandum of Understanding ("Agreement" or "MOU") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2004, by People Assisting Lodi Shelter dba PALS ("PALS") and THE CITY OF LODI, acting by and through the City's Animal Care and Control Department ("City").

Background

A. City operates animal care and control services which accepts thousands of surrendered, stray and abandoned domestic pets each year. City holds these pets at the City shelter for at least the period of time required by law, then makes adoptable pets available to the public for adoption. City desires to increase the adoption rate and significantly reduce the euthanasia rate of excess adoptable pets by expanding the adoption program and establishing a new pet adoption center.

B. For over eight years, PALS cofounders have volunteered to raise funds, promote adoptions of shelter pets, provide spay/neuter to control over-population, and assisted shelter staff with caring for and grooming pets and cleaning shelter facilities. In or about 2001, PALS cofounders established, furnished, staffed and maintained the shelter's current adoption area, "Cassie's Garden." In July 2004, PALS was granted 501(c)(3) nonprofit status from the IRS. PALS desires to establish a new, attractive adoption facility that will significantly increase the adoption rate of shelter pets by the community.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. PALS and City agree that PALS will establish a new pet adoption facility where members of the public can interact with adoptable City Shelter pets in a conducive setting, and attend information/education programs to learn about responsible pet ownership. The pet

adoption center will be located in a detached modular building located on the Shelter grounds.

2. Rent. PALS agrees to pay the rent for the modular building that will serve as the new pet adoption center.

3. Modification and Utilities. City agrees to prepare the building site foundation for the new pet adoption center, and to install and connect power, sewer and water services. City agrees to provide or pay utility expenses for the shelter adoption center, including power, sewer, water, garbage, and City and local telephone service.

4. Maintenance. PALS and City agree to cooperate fully to ensure that maintenance of the pet adoption center interior meets national standards established by humane associations for animal shelters. City agrees to maintain the pet adoption center building and grounds, including utilities. PALS agrees to establish cleaning and maintenance protocols and to train and supervise volunteers and staff to achieve those protocols. PALS agrees to use best efforts to provide volunteers to clean and maintain the pet adoption center on a daily basis. City agrees to provide such daily cleaning and maintenance services when PALS is unable to do so. The parties agree that cleaning and maintenance of the new pet adoption center will be shared until such time as PALS has recruited sufficient numbers of volunteers to cover daily shifts. PALS anticipates meeting this goal within the first three months of the pet adoption center opening.

6. Administration. City and PALS agree that PALS shall be responsible for administering the pet adoption facility, including but not limited to: Establishing adoption hours; recruiting, training, supervising and staffing volunteers; ordering/purchasing equipment, furnishings, materials and supplies; screening potential adoptive residents and processing adoption applications, educating adoptive residents about responsible pet ownership; developing and implementing community education programs to promote responsible pet ownership, adoptions, and spay/neuter. City shall continue to furnish pet food and cat litter supplies for shelter animals residing in the pet adoption center.

7. Finances. City recognizes that PALS volunteers have raised thousands of dollars over the years for the benefit of the Shelter. At this time, City is maintaining a fund balance of \$14,127.74 that was raised from the community by PALS volunteers for the benefit of shelter pets. PALS and City agree that this fund shall be used for the sole purpose of establishing the new adoption facility and promoting pet adoptions, and funds shall only be released as requested by PALS' authorized representative(s), *i.e., officers or board members presenting a board resolution.*

8. Transparency. PALS agrees to make its financial records available to City for review upon request. As an exclusively volunteer charitable 501(c)(3) organization, PALS is fiscally accountable to its participating volunteers, as well as to the Attorney General. To afford the community the opportunity to become familiar and/or involved with PALS' programs, PALS will conduct one or more community meetings annually to present information about the progress of shelter adoptions, PALS' activities, and opportunities for public participation. City agrees, upon request, to provide PALS with financial information related to all funds contributed by PALS *to the City.*

9. Term. *The term of this agreement shall commence on the day the subject modular building is relocated to the Lodi Animal Shelter grounds, and shall continue for 2 years. This Agreement shall be renewable upon agreement by the parties.*

10. Mediation. In the event a dispute arises between the parties, City and PALS agree to mediate their dispute in good faith, using a mediator(s) or mediation service upon which they agree, each bearing its own costs.

11. Attorney Fees. In the event a dispute arises between the parties and they are unable to resolve it through mediation, the prevailing party to any litigation shall be entitled to all expenses incurred therefore, including reasonable attorney fees.

12. Optional Termination. Either party may terminate this Agreement in writing upon at least 30 days notice. In the event of an early termination, the following shall occur:

a. City agrees to assume all responsibility for the shelter adoption center, including rent, so long as the building remains on shelter property.

b. PALS shall have the option of removing any furnishings from the adoption center that were purchased by PALS.

c. All promises to perform that are contained in this agreement shall be void.

13. Indemnity and Insurance.

a. Indemnification by City. Except to the extent caused by the negligence or intentional misconduct of PALS or of any agent, servant or employee of PALS, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless PALS and all associated, affiliated, allied and subsidiary entities of PALS, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation. *(deleted to the extent...)*

b. Indemnification by PALS: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, PALS ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees") from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of PALS, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

c. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost an expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

d. Notice, Cooperation and Expenses: Each party must give the other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in

connection with such suits, actions or proceedings but shall not include attorney fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnatee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnatee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall include the reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnatee in connection with such suits, actions or proceedings.

e. Insurance. During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the following types and limits of insurance:

i. Workers Compensation insurance meeting applicable statutory requirements and employer's liability insurance with minimum limits of one hundred thousand dollars (\$100,000.00) for each accident.

ii. Comprehensive Commercial General Liability insurance with minimum limits of one million dollars (\$1,000,000.00) as the combined single limit for each occurrence of bodily injury, personal injury and property damage.

iii. All policies other than those for Workers Compensation shall be written on an occurrence and not on a "claims made" basis.

iv. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.

f. Named Insureds: All policies, except for Workers Compensation policies, shall name City and all of its associated, affiliated, allied and subsidiary entities, now existing or hereafter created, and their respective officers, boards, commissions, employees, agents and contractors, as their respective interests may appear as



additional insureds (herein referred to as the "Additional Insureds"). Each policy which is to be endorsed to add Additional Insureds hereunder, shall contain cross-liability wording, as follows:

"In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner. as if separate policies had been insured to each insured hereunder."

g. Evidence of Insurance. PALS shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise PALS of any claim or litigation that may result in liability to PALS. PALS shall immediately advise City of any claim or litigation that may result in liability to City.

h. Cancellation of Policies of Insurance. PALS' insurance policies maintained pursuant to this Agreement shall contain the following endorsement:

"At least sixty (60) days prior written notice shall be given to City by the insurer of any intention not to renew such policy or to cancel, replace or materially alter same, such notice to be given by registered mail to the parties named in this paragraph of the Agreement."

i. Self-Insurance. The City's insurance requirements set forth herein may be satisfied by a self-insurance program that complies with all laws and regulations governing self-insurance.

14. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) U.S. postage prepaid, Return Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other

address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

If to City, to: Chief of Police  
Director, Department of Public  
Works  
Lodi, CA 94240  
Fax: (209) \_\_\_\_\_

If to PALS, to: People Assisting Lodi Shelter  
P.O. Box 985  
Lodi, CA 95241

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

16. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights hereunder shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

17. Miscellaneous.

a. PALS and City represent that each, respectively, has full right, power and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in the introduction above.

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City

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PEOPLE ASSISTING LODI SHELTER